

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

KARLA ESQUIVEL INDIVIDUALLY §
AND AS NEXT FRIEND OF S.S., §
A MINOR CHILD §

Plaintiffs, §

VS. §

UNITED STATES OF AMERICA §
Defendant, §

CIVIL ACTION NO. 5:24-cv-126

ORIGINAL COMPLAINT

NOW COMES **KARLA ESQUIVEL INDIVIDUALLY AND AS NEXT FRIEND OF S.S., A MINOR CHILD**, Plaintiffs herein, complaining of the **UNITED STATES OF AMERICA**, Defendant herein, and would show the Court as follows:

PARTIES

1. Plaintiffs, **KARLA ESQUIVEL** and her son, **S.S.**, are residents of the Southern District of Texas and resides in Laredo, Webb County, Texas.

2. Defendant, **UNITED STATES OF AMERICA**, may be served by delivering a copy of the summons and complaint to the United States Attorney for the Southern District of Texas, Alamdar Hamdani at the United States Attorney's Office, 1000 Louisiana Street, Suite 2300, Houston, Texas 77002, and by sending a copy of the summons and complaint by certified mail to Civil Process Clerk, at the United States Attorney's Office, 1000 Louisiana Street, Suite 2300, Houston, Texas 77002.

JURISDICTION AND VENUE

5. This Court has jurisdiction under Sections 2671 to 2680 and Section 1346(b) of Title 28 of the United States Code, commonly known as the Federal Tort Claims Act.

6. Venue: The acts and omissions complained of in the lawsuit occurred in the judicial district in which this Court sits, and venue is proper in the Southern District of Texas under 28 United States Code §1402(b).

7. Plaintiffs timely filed their Claims for Damages, Injury, or Death (standard form 95) with the United States Postal Service, General Law Service Center, 1720 Market Street, Room 2400, St. Louis, Missouri 63155-9948 on October 5, 2023. See attached **Exhibit “A”**. The U.S. Postal Service acknowledged receipt of Plaintiffs’ claims on October 16, 2023. Said agency has failed to even reply to the Plaintiffs’ claims thereby authorizing the Plaintiffs to bring this suit. Plaintiffs have six (6) months after a final denial by the federal agency in which to file suit in district court. 28 U.S.C. §2401(b). Although Defendant has not yet issued a formal denial despite ten (10) months having elapsed, Defendant’s failure to timely respond is deemed a final denial. 28 U.S.C. §2675(a).

8. Plaintiffs have complied with all conditions precedent to the filing of this cause of action.

CAUSE OF ACTION

9. Plaintiffs would show the Court that on October 31, 2022, in Laredo, Webb County, Texas, Plaintiff **KARLA ESQUIVEL** was prudently driving a 2013 Chevrolet Equinox traveling on Case Verde Rd. with her 9 year old son, **S.S.**, in the front passenger

seat. As they lawfully stopped for traffic ahead of them and school bus unloading children, they were violently rear-ended by a U.S. Postal Service vehicle driven by Postal carrier Roberto Israel Aguero. Plaintiffs would show that United States Postal Service employee Roberto Israel Aguero actions in failing to control speed and following too closely were the proximate cause of their damages as further enumerated herein. At the time of the collision, Roberto Israel Aguero was in the course and scope of his duties for the United States Postal Service. In causing the rear end collision, Roberto Israel Aguero was guilty of various acts or omissions which constitute negligence as enumerated below, each of which constitutes a proximate cause of Plaintiffs' injuries and damages, to wit:

- Failure to keep a proper lookout as a reasonable and prudent person would have done under the same or similar circumstances;
- Failed to timely apply the brakes to avoid the incident;
- Failed to control speed;
- Failed to take evasive action to avoid the incident;
- Failed to maintain proper control of the vehicle;
- Failed to maintain an assured clear distance from Plaintiffs' vehicle and failed to safely stop without colliding in violation of Texas Transportation Code section 545.062; and

10. Under the Federal Tort Claims Act and under the laws of the State of Texas, the Defendant UNITED STATES OF AMERICA would be liable to the Plaintiffs for their personal injuries and loss of property caused through the negligent or wrongful act(s) or omission(s) of its employee, Roberto Israel Aguero, committed while acting within the scope of his office or employment with the Defendant.

DAMAGES

11. Plaintiff **KARLA ESQUIVEL** would show that as a proximate cause of the aforesaid negligence of the above-named Defendant, she sustained injuries to her neck, upper back, mid-back, shoulders and right elbow. Plaintiff has suffered physical pain and mental anguish in the past and in all reasonable probabilities will continue to so suffer in the future; she has suffered physical impairment in the past and in all reasonable probabilities will continue to so suffer in the future; she has suffered impairment to earning capacity in the past and in all reasonable probability continue to suffer a loss of wage-earning capacity in the future. Plaintiff **KARLA ESQUIVEL** has incurred reasonable and necessary medical expenses for the proper treatment of her injuries in the past and in all reasonable probabilities will continue to incur medical expenses in the future. All of the aforementioned damages are in a total amount of One Hundred thousand dollars, (**\$100,000.00 Dlls.**) for which she sues.

12. Plaintiff, **KARLA ESQUIVEL**, would show that as a result of the negligence of the Defendant, her minor son, **S.S.**, suffered bodily injuries to his neck and back and feelings of fear. He has suffered physical impairment, physical pain and mental anguish in the past because of such injuries and in all reasonable probability will continue to so suffer in the future. Plaintiff, **KARLA ESQUIVEL**, has incurred reasonable and necessary medical expenses for the proper treatment of her minor son, **S.S.'s**, injuries in the past and in all reasonable probability will continue to incur medical expenses in the future. Minor Plaintiff, in all reasonable probability, will suffer a loss of wage-earning capacity in the future. These damages are within the jurisdictional limits of the Court.

13. Plaintiff **KARLA ESQUIVEL** would show that as a result of the accident caused by United States Postal Service employee, her 2013 Chevrolet Equinox was damaged. The cost to repair the damages to her vehicle is Three Thousand Five Hundred and Forty Six dollars Ninety Four cents, (**\$3,546.94 Dlls**). Plaintiff does hereby sue the Defendant for the property damage repairs to her vehicle.

13. As a proximate result of the damage done to Plaintiff **KARLA ESQUIVEL'S** 2012 Chevrolet Equinox, she will lose the use and enjoyment of said vehicle for five days. The reasonable cost of renting a similar vehicle is approximately fifty dollars (\$76.20) per day, for a loss of use of Three Hundred Eighty One dollars (**\$381.00 Dlls**). Plaintiff **KARLA ESQUIVEL** hereby sues for the reasonable loss of use of her vehicle.

14. Plaintiffs further alleges that they are entitled to recover prejudgment and post-judgment interest as provided by law.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that the Defendant be served with citation and required to appear and answer this petition, that upon final hearing hereof Plaintiffs have judgment against the Defendant, for Plaintiffs' damages as alleged herein, for costs of court and for such other and further relief, both general and special, at law and in equity, to which the Plaintiffs may be justly entitled.

Respectfully submitted,

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